

Beneficiary Designation Testimony to the U.S. Department of Labor ERISA Advisory Council

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PETROS P. KOUMANTAROS
MANAGING SHAREHOLDER & CHIEF EXECUTIVE OFFICER
SPECTRUM PENSION CONSULTANTS, INC.

BRIAN J. DOWNER
MANAGING CONSULTANT
SPECTRUM PENSION CONSULTANTS, INC.

On behalf of Spectrum Pension Consultants, Inc., we appreciate the opportunity to testify today. Incorporated in 1978, Spectrum Pension Consultants is a regional consulting firm located in Tacoma, Washington, which provides professional services to employers sponsoring retirement and other employee benefit programs for their organizations. We are pleased to share with you our views on beneficiary designation best practices and recommendations for effectively managing beneficiary issues.

More than 30 years of consulting with employers and their plan participants has taught our firm that beneficiary designations are unimportant, until a participant dies. At that point, beneficiary designation is a critically important matter for the participant's family, plan sponsor, and service providers.

Unlike other participant-initiated transactions in qualified plans such as investment changes, distributions, participant loans, etc., a participant can die only once. Consequently, participants treat their beneficiary designations in an out of sight, out of mind manner. While best practices require participants to complete a beneficiary designation at the time of plan enrollment, employers and services providers do little to encourage participants to revisit their designations later. As we have all observed, life event changes such as marriage and divorce can create problems if the participant's beneficiary designation is not updated.

Former employees who defer their benefit distributions and remain participants in qualified plans create additional complexity. Employer human resource departments, however well intentioned, are generally ill equipped to administer beneficiary designations of former employees. Our experience suggests inactive plan participants rarely revise beneficiary

designations, if such changes must be made through their former employer's human resource department.

Consequently, we believe the record keeper, generally a plan service provider, is best equipped to maintain beneficiary designations. Provided the Department permitted initial beneficiary designations and revisions to be made electronically, this service could be provided with minimal additional plan costs. In fact, many record keeping technology platforms currently enable participants to review and modify their beneficiary designations online. Technology platforms could enable participants to upload additional documentation, such as notarized spousal consent forms. Naturally, like other qualified plan transactions, participants could request beneficiary change forms on paper by contacting their plan's service provider. The record keeper could digitize completed paper forms and preserve the data in the plan record.

Much could be accomplished by leveraging the plan's record keeper to maintain beneficiary designations. For instance, the record keeper could identify the designated beneficiary on the participant's benefit statement, note the importance of reviewing and modifying beneficiaries because of life event changes, and provide a simple explanation of spousal consent rules. Since *all* plan participants receive benefit statements, not just current employees, inactive participants with balances would receive routine beneficiary designation refreshers, just as active participants would. This refresher could provide suitable calls to action when a participant's circumstances have changed and their prior beneficiary designation is no longer appropriate.

Payroll data files, which employers frequently provide to record keepers electronically, could identify each employee's federal tax withholding filing status. When a tax filing status changes, record keepers could send participants electronic notices, recommending they review their beneficiary designations. When record keeper service provider changes occur, the succeeding record keeper would request beneficiary data during the conversion. This data, like participant demographics and financial records, would simply be part of the conversion process.

Some of the beneficiary designation problems created by divorce can be addressed through plan documentation best practices. Many documents call for the automatic revocation of spousal beneficiary designation in the event of a divorce decree or a decree of legal separation. Other plan documentation best practices provide for default beneficiaries in the absence of a participant's affirmative beneficiary designation. Our firm, as a Regional Prototype Plan Sponsor, includes such default provisions. Where a participant does not designate a beneficiary, our Prototype first identifies the Spouse as beneficiary; then, if there is no surviving spouse, the participant's descendants; then, if there are no surviving descendants, the participant's parents; and finally, if there are no surviving parents, the participant's estate.

Such “turn-key” approaches are particularly helpful for participants uncertain of whom to appoint at the time of enrollment, or for participants automatically enrolled.

However complicated they may seem, plan documentation and records management are the easiest aspects of beneficiary administration – more difficult is locating and verifying the beneficiary and acting upon the participant’s intentions after death. Problems can arise when primary beneficiaries cannot be located and contingent beneficiaries elevate claims to the ERISA Plan Administrator. While service providers may provide counsel and administrative support, the Plan Administrator ultimately bears responsibility for ensuring the beneficiary program is administered in accordance with the plan provisions and the requirements of law. When the Plan Administrator is unable to determine the beneficiary, or in the cases of competing claims, the plan may enable the Plan Administrator to file an interpleader action, and seek a court order as to the beneficiary determination. While such an approach may be costly and time consuming, it brings unambiguous closure to the matter.

We believe that by leveraging capable service providers, leading technology, sensible reporting, and prudent default plan provisions, the suggestions and best practices we have outlined offer meaningful ways to enhance qualified plans for participants and their beneficiaries. Our firm remains committed to assist the Department in whatever capacity is necessary to support enhancements to qualified plan beneficiary designation processes.